



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738 and 742

[Docket No. 230807-0186]

RIN 0694-AJ25

Expansion of Nuclear Nonproliferation Controls on the People's Republic of China and Macau

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In response to the People's Republic of China's (China) military modernization efforts, military-civil fusion strategy, and expansion of its nuclear forces, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by adding additional nuclear nonproliferation controls on China and Macau. This change specifically applies to items controlled for Nuclear Nonproliferation (NP) column 2 reasons for control. These controls enhance U.S. Government efforts to monitor the export of these items and to ensure they are only being used in peaceful activities such as commercial nuclear power generation, medical developments, production of or use in medicine, and non-military industries.

DATES: This rule is effective August 11, 2023.

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Director, Nuclear and Missile Technology Controls Division, tel. (202) 482-1641 or email steven.clagett@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Existing Nuclear Nonproliferation Export Controls

The multilateral Nuclear Suppliers Group (NSG) comprises nuclear supplier countries that seek to contribute to the nonproliferation of nuclear weapons through the implementation of two sets of guidelines for nuclear exports and nuclear-related exports. The first set of NSG guidelines applies to exports of nuclear material, equipment, and technology generally subject to the export licensing jurisdiction of the Nuclear Regulatory Commission (NRC) and the Department of Energy. The second set of NSG guidelines applies to exports of nuclear-related dual-use items, which are subject to the Export Administration Regulations (EAR) (15 CFR parts 730-774), administered by the Department of Commerce, Bureau of Industry and Security (BIS). Such items are listed on the Commerce Control List (CCL) (supplement no. 1 to part 774) and controlled for nuclear nonproliferation column 1 (NP1) reasons (see § 742.3(a)(1)). Items controlled for NP1 reasons require a license to all destinations except NSG member countries listed in Country Group A:4 (see supplement no. 1 to part 740).

In addition to implementing the multilateral NP1 controls, BIS controls certain additional items unilaterally for nuclear nonproliferation reasons. Such items are listed on the CCL and controlled for nuclear nonproliferation column 2 (NP2) reasons (see § 742.3(a)(2)). These items require a license when destined to Country Group D:2 (supplement no. 1 to part 738) countries, and with this rule, to the People's Republic of China (China) or Macau. (Note: Effective December 23, 2020, BIS removed Hong Kong as a separate destination under the EAR; accordingly, licensing requirements for China apply to all exports and reexports to, as well as transfers within, Hong Kong (see 85 FR 83765)). Items controlled for NP2 reasons are listed in Export Control Classification Numbers (ECCNs) 1A290, 1C298, 2A290, 2A291, 2D290, 2E001, 2E002, and 2E290. Items controlled under these ECCNs include, for example, depleted uranium, graphite and deuterium for non-nuclear end use, and generators and other equipment for nuclear

plants. Deuterium and graphite for nuclear end use is subject to NRC export licensing jurisdiction pursuant to 10 CFR part 110.

Nuclear Nonproliferation Export Controls Applicable to China and Macau Prior to This Rule

Although China is a NSG member country, it is not listed in Country Group A:4 (supplement no. 1 to part 740). Accordingly, a license is required, as specified on the Commerce Country Chart (supplement no. 1 to part 738), for items controlled for NP1 reasons to China. Likewise, a license is required for items controlled for NP1 reasons to Macau, a special administrative region of China. Prior to this rule, neither China nor Macau were subject to NP2 reasons for control. However, pursuant to § 744.21, some items controlled for NP2 reasons and listed in supplement no. 2 to part 744 require a license when destined to a ‘military end use’ or a ‘military end user’ in China.

In addition to list-based license requirements for nuclear-related dual-use items, BIS implements end use and end user controls to restrict the export, reexport, and transfer (in-country) of items to or within China and Macau for nuclear nonproliferation and certain maritime nuclear propulsion reasons. Pursuant to § 744.2 of the EAR, a license is required for the export, reexport, or transfer (in-country) to or within China and Macau when there is “knowledge” (as that term is defined in part 772 of the EAR) that the item will be used directly or indirectly in nuclear explosive activities, unsafeguarded nuclear activities, or safeguarded or unsafeguarded nuclear fuel cycle activities. In addition, pursuant to § 744.5 of the EAR, a license is required for the export, reexport, or transfer (in-country) to or within China and Macau when there is “knowledge” the item is for use in a maritime nuclear propulsion project. These provisions are not affected by this final rule.

Recent U.S. Government Reaction to and Analysis of Chinese Nuclear Activities

BIS has added entities in China to the Entity List for reasons related to military modernization and nuclear weapons. As one example, on June 5, 2020, BIS added to the Entity List ten entities owned by, operated by, or directly affiliated with the Chinese Academy of Engineering Physics (CAEP), which is the technology complex responsible for the research, development and testing of China's nuclear weapons and has been listed on the Entity List since June 30, 1997. See 85 FR 34495. Also, on August 14, 2019, BIS added four Chinese entities, China General Nuclear Power Group, China General Nuclear Power Corporation (CGNPC), China Nuclear Power Technology Research Institute Co. Ltd., and Suzhou Nuclear Power Research Institute Co. Ltd., because each of these four Chinese entities has engaged in or enabled efforts to acquire advanced U.S. nuclear technology and material for diversion to military uses in China. See 84 FR 40237. The Entity List restricts the export, reexport, or transfer (in-country) of all items subject to the EAR to these entities. License applications involving such entities are reviewed with a presumption of denial.

BIS has continued to take action to address escalating concerns about China's nuclear activities. On October 7, 2022, BIS implemented restrictions on the export of certain advanced computing items to China and imposed additional restrictions on certain entities on the Entity List. Four of those entities were determined to be involved with supercomputers in China that are believed to be used in nuclear explosive activities. See 87 FR 62186, at 62187. The October 7 rule specifically noted a U.S. intelligence community assessment that China "will continue the most rapid expansion and platform diversification of its nuclear arsenal in its history, intending to at least double the size of its nuclear stockpile during the next decade and to field a nuclear triad and is building a larger and increasingly capable nuclear missile force that is more survivable, more diverse, and on higher alert than in the past, including nuclear missile systems designed to manage regional escalation and ensure an intercontinental second-strike capability."

Id. (internal quotations marks omitted). The restrictions imposed in that rule were intended to “protect U.S. national security and foreign policy interests by restricting [China’s] access to advanced computing for its military modernization, including nuclear weapons development...” Id. at 62186.

According to the United States Department of Defense (DoD) report, *Military and Security Developments Involving the People’s Republic of China* also known as the *China Military Power Report*, published on November 29, 2022 (see <https://www.defense.gov/CMPR/>), China has a decade-long target to modernize, diversify, and expand its nuclear forces as well as a long-term military-civil fusion strategy. China’s continued nuclear expansion and military-civil fusion strategy pose a concern to global and regional stability. In light of China’s objectives to build an integrated national strategic system by developing and acquiring advanced dual-use items for military purposes, fusing its defense industrial base with its civilian technology industrial base, building military requirements into civilian infrastructure, and leveraging civilian construction for military purposes, BIS has determined it is necessary to enhance nuclear nonproliferation export controls.

Expansion of Nuclear Nonproliferation Export Controls on the People’s Republic of China and Macau

In this final rule, BIS is expanding the scope of nuclear-related export controls applicable to China and Macau. This change is necessary to protect U.S. national security and foreign policy interests by imposing a license requirement to China and Macau on items that could contribute to nuclear activities of concern. These controls are being put in place to further allow the U.S. Government to monitor the export of these items to assure that they are only being used in peaceful activities such as commercial nuclear power generation, medical developments, production of or use in medicine, and non-military related industries. The specific regulatory changes are detailed below.

For purposes of the EAR, this rule does not change the status of Macau; it will continue to be treated as a separate destination from China. According to the U.S. Department of State's fact sheet, U.S. Relations with Macau, Bilateral Relations Fact Sheet of June 1, 2021 (see <https://www.state.gov/u-s-relationswith-macau/>), Macau has been a Special Administrative Region of China since 1999, when it was returned to Chinese sovereignty from Portuguese administration; therefore, its foreign relations and defense are the responsibility of China. China grants Macau limited autonomy in economic and commercial relations. U.S. policy toward Macau is grounded in the U.S. Macau Policy Act of 1999 and reflects U.S. support for Macau's autonomy under the "One Country, Two Systems" framework established in Macau's Basic Law. Because of Macau's position as a Special Administrative Region of China, and the potential risk of diversion of items subject to the EAR from Macau to China, this rule adds Macau as a destination to which a license will be required to prevent the diversion to China of items determined to be critical to protecting U.S. national security and foreign policy interests.

Part 738

This final rule applies NP2 reasons for control to China and Macau in the Commerce Country Chart (supplement no. 1 to part 738). This imposes a license requirement for NP2 controlled items destined for China or Macau.

Part 742

As a conforming change, this final rule adds China and Macau to § 742.3(a)(2) to impose the license requirements on the NP2 controlled items. License applications for items controlled for NP2 reasons to China and Macau will be reviewed in accordance with the license review policies set forth in § 742.3(b)(3) and (4) of the EAR. BIS is also using this rule to revise the language of paragraph (a)(2) to ensure its clarity.

Another U.S. Government agency is putting forward a nuclear export-related action as well. The NRC is publishing a separate notice of issuance of an order affecting

general licenses for exports of special nuclear material, source material, and deuterium for nuclear end use to China issued under 10 CFR 110.21, 110.22, and 110.24, respectively.

Saving Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on August 11, 2023, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR), provided the export, reexport, or transfer (in-country) is completed no later than on September 11, 2023.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. Sections 4801–4852. ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694-0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 31,919 hours. BIS expects an increase of 588 burden hours for this collection.

3. This rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

The Department of Commerce finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no Final Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects
15 CFR Part 738

Exports.

15 CFR Part 742

Exports and Terrorism.

Accordingly, the Export Administration Regulations (15 CFR parts 738 and 742) are amended as follows:

PART 738 – COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

1. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

2. In Supplement no. 1 to part 738 – Commerce Country Chart, the table is amended by adding an entry under the column NP2 for China and Macau. The revision reads as follows:

Supplement No. 1 to Part 738—Commerce Country Chart

[Reason for Control]

Count ries	Chemical & Biological Weapons			Nuclear Nonproliferati on		National Security		Missile Tech	Regional Stability		Firearm s Convent ion	Crime Control			Anti- Terrorism	
	C B 1	CB 2	CB 3	NP 1	NP 2	N S 1	NS 2	MT 1	F. S 1	RS 2	FC 1	CC 1	C C 2	CC 3	AT 1	AT 2
China	* * * * *															
	X	X	X	X	X	X	X	X	X	X		X		X		
	* * * * *															
Macau	X	X	X	X	X	X	X	X	X	X		X		X		
	* * * * *															
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PART 742 – CONTROL POLICY – CCL BASED CONTROLS

3. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

4. Section 742.3 is amended by revising paragraph (a)(2) to read as follows:

§ 742.3 Nuclear nonproliferation.

(a) ***

(2) If NP Column 2 of the Country Chart (supplement no. 1 to part 738 of the EAR) is indicated in the applicable ECCN, a license is required when the item is destined to a Country Group D:2 (see supplement no. 1 to part 740 of the EAR) country, China (the People’s Republic of), or Macau.

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Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

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